to have regarded the whole installation as a 'tank' which was in the nature of a structure; whereas I think the metal cylinder still remains a 'tank' but, by being built into one whole structure, it partakes of the nature of a structure."

Viscount Simonds pointed out that under the relevant legislation, the tanks only became rateable (*inter alia*) if they were buildings or structures in the nature of buildings or structures. It would seem, then from reading Lord Denning's judgment, that he certainly would not agree that the tanks were buildings or structures. Both in the extract that I have cited above and at the end of his judgment he makes it clear that the metal cylinders are merely when *in situ* in the nature of structures. Viscount Simonds was of the opinion that the metal cylinders were 'tanks' which were housed within a structure and that the whole installation did not itself form a tank, and he did not consider that any finding of fact in that case (and the facts in that case are identical to those in the present case) would justify finding that the metal cylinders emplaced as they were in that case and are in the present case could be a building or structure or in the nature of a building or structure.

If I am right in holding that the improved value of a holding must be based on the land and such things brought on to the land that attach to and form an integral part of the land, that is to say, on the facts of this case, the buildings, then the cost of the tanks must be excluded from the assessment because they are not buildings as defined under the Enactment. This I think must be correct. The basis upon which a ratepayer is to be assessed is a matter for the legislature. If the ratepayer were to be expected to pay on everything that he brought on to his holding for his own comfort or business which might in the widest sense be called an improvement, the law would have said so. It has not done so. It merely bases the assessment on the improved value of the holding which is the capital sum which the holding (that is to say the land and any buildings on it) would be expected to realise if offered for sale on such reasonable terms as a *bona fide* vendor would require. These tanks were not buildings. They might as Viscount Simonds has said in the *Shell-Mex* case [4] probably be described as being a physical entity with buildings but as he further pointed out the metal containers were physical entities when they were put in the compartment and they remain physical entities when they lie there and would still be physical entities if they were taken away as they easily could be. Mr. Anthony Hills underlined this when he said that in any sale of the holding the tanks would be the subject of a separate contract. In my opinion the tanks were wrongly included in the improved value of the holding upon which the assessment under section 28 of the Enactment was made.

This appeal must therefore be allowed and the assessment of the improved value by the Town Council varied by deleting the sum of $6,695, that is to say the cost of the two fuel tanks from the sum of $81,125 the original sum assessed in respect to the appellant company's holding making the improved value upon which the appellant company must be assessed the sum of $74,430. The Town Council must pay the costs of the appeal.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Goh Bin Lay & Co.*

VALLIAMAI v. PUBLIC PROSECUTOR

[A. Cr. J. (Ong J.) May 31, 1962]

[K.L. — Criminal Appeal No. 21 of 1962]

Criminal Law and Procedure — Bail bond — Application for discharge — Forfeiture of bond — Criminal Procedure Code (F.M.S., Cap. 6), ss.393 and 404 — Discretion.

The relevant provisions relating to forfeiture of a bond are in section 404 of the Criminal Procedure Code (Cap. 6) which provides for "any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid." This makes it clear that, upon sufficient cause shown, forfeiture may be waived altogether, which subsection (v) further states in specific terms, that the Court has a discretion to "remit any portion of the penalty mentioned and enforce payment in part only." Careful consideration, therefore, ought to be given by Magistrates to the question in two stages, first, has sufficient cause been shown against forfeiture; secondly, if not, are the circumstances such that the whole sum of the penalty ought to be enforced.

In this case there was sufficient cause shown against the forfeiture because the appellant had gone to Court twice for the express purpose of being relieved of her bond and had been advised by the Registrar of the Sessions Court to make her application in Court when the case next came up for hearing, and at which hearing she had no opportunity to make her application to the President. Under section 393(i) of the Criminal Procedure Code her application could have been dealt with then and there either by the President or if he was not available, by the Registrar as such Registrar is an ex-officio gazetted 2nd class Magistrate.

CRIMINAL APPEAL.

T. Selvarasan for the appellant.

H. Sankey (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant, as bailor for her son-in-law, Sivayogam, who was the accused in certain criminal proceedings in the Sessions Court, Kuala Lumpur, signed a bail bond on October 5, 1961 as surety for the attendance in

court of the said accused on December 1, 1961 and thereafter, until otherwise directed by that court. In case of his default she bound herself to forfeit to the Government the sum of $2,000, and for the due performance of the bond she deposited in court the sum of $2,000 in cash. She now appeals against an order made by the President of the Sessions Court, on December 30, 1961 for forfeiture of the whole of the said sum to Government by reason of the accused's default in attending court on December 28.

The relevant provisions relating to forfeiture of a bond are in section 404 of the Criminal Procedure Code, which provides for "any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid." This makes it clear that, upon sufficient cause shown, forfeiture may be waived altogether, while subsection (v) further states in specific terms that the Court has a discretion to "remit any portion of the penalty mentioned and enforce payment in part only." Careful consideration, therefore, ought to be given by Magistrates to the question in two stages, first, has sufficient cause been shown against forfeiture; secondly, if not, are the circumstances such that the whole sum of the penalty ought to be enforced. This postulates an active exercise of the court's discretion.

The facts in the present case are as follows: The accused did attend court on the dates fixed from time to time until December 28, 1961, when he failed to appear, but sent instead a medical certificate which turned out to have been forged. On or about December 18 or 19, however, the appellant had come to court for the express purpose of being relieved of her bond as she was not prepared to continue as surety for her son-in-law's subsequent appearances in court. She saw the Registrar of the Sessions Court in Chambers and was advised by him to make her application in court when the case next came up for hearing, which happened to be on December 20. She was present in court on that date, but the case was again postponed, apparently on coming up for mention, to the next day, December 21. On that occasion the proceedings were concluded with such despatch that she had no opportunity to make her application to the President, and I am not at all surprised that this was so because a simple Tamil woman can hardly be expected to have been so temerous as to rise up and interrupt the proceedings in court, or to know when and how she should do so. In that predicament she spoke to an interpreter who referred her to the Registrar. But what took place thereafter does not appear on the record. At any rate she attended court again on December 21, and after the trial of the accused commenced she left some time in the course of the day. I think it will be fair to assume that she had no idea that the trial, once commenced, would not have been concluded the same evening. That same night she was informed by the accused that the further hearing had been adjourned to December 28. On that date, however, the appellant herself did not attend court, and the accused too, failed to appear on the false pretext that he was ill. Notice was thereupon issued to the appellant to show cause why the bond should not be enforced. She attended court on December 30, and the facts above related were brought to the attention of the President, and confirmed by the Registrar of the court. The learned President, however, did not feel satisfied that on the explanation given sufficient cause was shown against forfeiture, and he made an order for the whole of the $2,000 to be forfeited.

With due respect, I think that the reason given by the learned President for making the order of forfeiture, namely, that the appellant "did not make any application to the President" after advice to that effect by the Registrar, is not a sufficient reason for making an order which causes loss to the appellant to the extent of the whole sum of $2,000.

In the first place, I think there has been an oversight by both the learned President and his Registrar of section 393(i) of the Criminal Procedure Code which provides that "all or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or in part or so far as relates to the applicants." The Registrar of the Sessions Court is ex-officio a gazetted 2nd Class Magistrate, *vide Selangor Gazette* Notification No. 608 of August 13, 1953. The appellant had been twice before the Registrar for the purpose of being discharged from her bond — on December 18 or 19 — and again on December 20 — and her application could have been dealt with then and there either by the President, or, if he was not then available, by the Registrar. In the next place, and allowing for the oversight, had the Registrar only taken a few moments of time to make a note of the application and left it on top of the file when the appellant had asked to be discharged, it could not possibly have escaped the attention of the President and been dealt with when the case came up on December 20 and 21.

For the above reasons, I am satisfied that sufficient cause had been shown. The order of forfeiture is accordingly set aside and I order that the sum of $2,000 forfeited be returned to the appellant.

Order of forfeiture set aside.